



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2012-0237; FRL-9757-2]

Approval and Promulgation of Implementation Plans; Tennessee; Interstate Transport Infrastructure Requirements (Prevention of Significant Deterioration) for the 2008 8-Hour Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental proposed rule.

SUMMARY: EPA is proposing to conditionally approve the State Implementation Plan (SIP) submission, submitted by the State of Tennessee through the Tennessee Department of Environment and Conservation (TDEC). This proposal pertains to the Clean Air Act (CAA) requirements pertaining to prevention of significant deterioration (PSD) (concerning the PM_{2.5} increments) for the 2008 8-hour ozone national ambient air quality standards (NAAQS) infrastructure SIPs. The CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by EPA, which is commonly referred to as an “infrastructure” SIP. TDEC certified that the Tennessee SIP contains provisions that ensure the 2008 8-hour ozone NAAQS are implemented, enforced, and maintained in Tennessee (hereafter referred to as “infrastructure submission”). EPA is proposing to supplement the earlier proposed approval related to sections related to prevention of significant deterioration (PSD) (concerning the PM_{2.5} increments) by proposing conditional approval of the State’s infrastructure submission based upon a October 4, 2012, commitment by the State to submit a SIP revision to address current deficiencies in these sections. EPA is

proposing to conditionally approve these sections related to PSD because the current Tennessee SIP does not include provisions to fully comply with the requirements of these sections. All of the other required infrastructure elements for the 2008 8-hour ozone NAAQS are being addressed in a separate rulemaking.

DATES: Written comments must be received on or before [insert date 21 days after date of publication in the Federal Register].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R04-OAR-2012-0237, by one of the following methods:

1. www.regulations.gov: Follow the on-line instructions for submitting comments.
 2. E-mail: R4-RDS@epa.gov.
 3. Fax: (404) 562-9019.
 4. Mail: "EPA-R04-OAR-2012-0237," Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960.
 5. Hand Delivery or Courier: Lynorae Benjamin, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960.
- Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Instructions: Direct your comments to Docket ID No. EPA-R04-OAR-2012-0237. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through www.regulations.gov or e-mail, information that you consider to be CBI or otherwise protected. The www.regulations.gov website is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA’s public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: All documents in the electronic docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted

material, is not placed on the Internet and will be publicly available only in hard copy form.

Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Nacosta C. Ward, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9140. Ms. Ward can be reached via electronic mail at ward.nacosta@epa.gov.

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I. Background

On March 27, 2008, EPA promulgated a new NAAQS for ozone based on 8-hour average concentrations. EPA revised the level of the 8-hour standard to 0.075 parts per million (ppm). *See* 77 FR 16436. Pursuant to section 110(a)(1) of the CAA, states are required to submit SIPs meeting the requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS. Section 110(a)(2) requires states to address basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the NAAQS. States were required to submit such SIPs for the 2008 8-hour ozone NAAQS to EPA no later than March 2011.

Midwest Environmental Defense and Sierra Club submitted a complaint on November 20, 2011, related to EPA's failure to issue findings of failure to submit related to the infrastructure requirements for the 2008 8-hour ozone NAAQS. On December 13, 2011, and March 6, 2012, Midwest Environmental Defense and Sierra Club submitted amended complaints for failure to promulgate prevention of significant deterioration (PSD) regulations within two years and failure to approve or disapprove SIP submittals, and to remove claims regarding states that have submitted SIPs for the 2008 8-hour ozone NAAQS, respectively. Tennessee was among the states named in the November 2011 complaint, and the December 2011 and March 2012 amended complaints. Specifically, the plaintiffs claim that EPA has failed to perform its mandatory duty by not approving in full, disapproving in full, or approving in part and disapproving in part Tennessee's 2008 ozone infrastructure SIP addressing sections 110(a)(2)(A)-(H) and (J)-(M) by no later than April 19, 2011.

Tennessee's infrastructure submission was received by EPA on October 19, 2009, for the 2008 8-hour ozone NAAQS. The submission was determined to be complete on April 19, 2010. On July 3, 2012, Tennessee submitted a letter to EPA withdrawing the portion of its October 19, 2009, SIP submission that purported to address the requirements related to section 110(a)(2)(D)(i)(I) interstate transport. On August 22, 2012, EPA proposed approval of Tennessee's 2008 8-hour ozone infrastructure SIP, with the exception of section 110(a)(2)(D)(i)(I).¹ See 77 FR 50651. The proposed approval included sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), and 110(a)(2)(J); however, it was subsequently found that Tennessee's SIP did not contain all of the requisite provisions in its SIP necessary to fully approve these elements. The deficient portion of Tennessee's SIP pertains to PM_{2.5} PSD increments.

On October 4, 2012, Tennessee submitted a request for conditional approval of sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) with respect to the PSD requirements (hereafter referred to as prong 3 of 110(a)(2)(D)(i)),² and 110(a)(2)(J) to address the SIP deficiencies concerning PM_{2.5} PSD increments for these elements. Today's action proposes conditional approval for these sections based upon a commitment by Tennessee to submit the necessary SIP revisions to address PM_{2.5} PSD increments for the 2008 8-hour ozone NAAQS.

II. What Elements are Required under Sections 110(a)(1) and (2)?

¹ Section 110(a)(2)(D)(i)(I) for the 2008 8-hour ozone NAAQS will be addressed through a separate rulemaking.

² Section 110(a)(2)(D)(i) includes four requirements referred to as prongs 1 through 4. Prongs 1 and 2 are provided at section 110(a)(2)(D)(i)(I); prongs 3 and 4 are provided at section 110(a)(2)(D)(i)(II).

Section 110(a) of the CAA requires states to submit SIPs to provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within three years following the promulgation of such NAAQS, or within such shorter period as EPA may prescribe. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affects the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the state's existing SIP already contains. In the case of the 2008 8-hour ozone NAAQS, states typically have met the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with the 1997 8-hour ozone NAAQS.

More specifically, section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for "infrastructure" SIP requirements related to a newly established or revised NAAQS. As mentioned above, these requirements include SIP infrastructure elements such as modeling, monitoring, and emissions inventories that are designed to assure attainment and maintenance of the NAAQS. The requirements that are the subject of this proposed rulemaking are listed below.³

- 110(a)(2)(A): Emission limits and other control measures.

³Two elements identified in section 110(a)(2) are not governed by the three year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but rather due at the time the nonattainment area plan requirements are due pursuant to section 172. These requirements are: (1) submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D Title I of the CAA; and (2) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, Title I of the CAA. Today's proposed rulemaking does not address infrastructure elements related to section 110(a)(2)(I) or the nonattainment planning requirements of 110(a)(2)(C).

- 110(a)(2)(B): Ambient air quality monitoring/data system.
- 110(a)(2)(C): Program for enforcement of control measures.⁴
- 110(a)(2)(D): Interstate transport.⁵
- 110(a)(2)(E): Adequate resources.
- 110(a)(2)(F): Stationary source monitoring system.
- 110(a)(2)(G): Emergency power.
- 110(a)(2)(H): Future SIP revisions.
- 110(a)(2)(I): Areas designated nonattainment and meet the applicable requirements of part D.⁶
- 110(a)(2)(J): Consultation with government officials; public notification; and PSD and visibility protection.
- 110(a)(2)(K): Air quality modeling/data.
- 110(a)(2)(L): Permitting fees.

⁴This rulemaking only addresses requirements for this element as they relate to attainment areas.

⁵Today's proposed rulemaking does not address element 110(a)(2)(D)(i)(I) (Interstate Transport) for the 2008 8-hour ozone NAAQS. Interstate transport requirements were formerly addressed by Tennessee consistent with the Clean Air Interstate Rule (CAIR) for the 1997 8-hour ozone NAAQS. On December 23, 2008, CAIR was remanded by the D.C. Circuit Court of Appeals, without vacatur, back to EPA. *See North Carolina v. EPA*, 531 F.3d 896 (D.C. Cir. 2008). Prior to this remand, EPA took final action to approve Tennessee's SIP revision, which was submitted to comply with CAIR. *See* 72 FR 46388 (August 20, 2007). In so doing, Tennessee's CAIR SIP revision addressed the interstate transport provisions in section 110(a)(2)(D)(i)(I) for the 1997 8-hour ozone NAAQS. In response to the remand of CAIR, EPA has promulgated a new rule to address interstate transport. *See* 76 FR 48208 (August 8, 2011) (the Transport Rule). That rule was recently vacated by the D.C. Circuit Court of Appeals. As a result of both the remand of CAIR and vacatur of the Transport Rule, Tennessee has not yet made a submission to address interstate transport. EPA's action on element 110(a)(2)(D)(i)(I) for the 2008 8-hour ozone NAAQS will be addressed in a separate action.

⁶This requirement was inadvertently omitted from EPA's October 2, 2007, memorandum entitled "Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-Hour Ozone and PM_{2.5} National Ambient Air Quality Standards," but as mentioned above is not relevant to today's proposed rulemaking.

- 110(a)(2)(M): Consultation/participation by affected local entities.

III. Scope of Infrastructure SIPs

EPA notes that this rulemaking does not address four substantive issues that are not integral to the state's infrastructure SIP submission. These four issues are: (i) existing provisions related to excess emissions during periods of start-up, shutdown, or malfunction at sources (SSM), that may be contrary to the CAA and EPA's policies addressing such excess emissions; (ii) existing provisions related to "director's variance" or "director's discretion" that purport to permit revisions to SIP approved emissions limits with limited public process or without requiring further approval by EPA, that may be contrary to the CAA (director's discretion); (iii) existing provisions for minor source new source review (NSR) programs that may be inconsistent with the requirements of the CAA and EPA's regulations that pertain to such programs (minor source NSR); and, (iv) existing provisions for PSD programs that may be inconsistent with current requirements of EPA's "Final NSR Improvement Rule," 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) (NSR Reform).

Instead, EPA has indicated that it has other authority to address any such existing SIP defects in other rulemakings, as appropriate. A detailed rationale for why these four substantive issues are not part of the scope of infrastructure SIP rulemakings can be found in EPA's June 11, 2012, proposed rule entitled, "Approval and Promulgation of Implementation Plans; Tennessee 110(a)(1) and (2) Infrastructure Requirements for the 1997 and 2006 Fine Particulate Matter National Ambient Air Quality Standards" in the section entitled, "Scope of Infrastructure SIPs" (*See* 77 FR 34306). It can also be found in EPA's August 22, 2012, proposed rule entitled, "Approval and Promulgation of Implementation Plans; Tennessee 110(a)(1) and (2)

Infrastructure Requirements for the 2008 8-Hour Ozone Matter National Ambient Air Quality Standards” in the section entitled, “Scope of Infrastructure SIPs.” *See* 77 FR 50651.

IV. What is EPA’s Analysis of How Tennessee Addressed Sections 110(a)(2)(C), Prong 3 of 110(a)(2)(D)(i), and 110(a)(2)(J) “Infrastructure” Provisions?

In this action, EPA is proposing to conditionally approve Tennessee’s infrastructure SIP for the following infrastructure sections for the 2008 8-hour ozone NAAQS: (1) section 110(a)(2)(C) to include a program in the SIP that regulates the modification and construction of any stationary source as necessary to assure that the NAAQS are achieved, (2) prong 3 of section 110(a)(2)(D)(i) to include adequate provisions prohibiting any source or other type of emissions activity within the State from emitting any air pollutant in amount which will interfere with measure required to be include in the applicable SIP for any State necessary to prevent significant deterioration, and (3) section 110(a)(2)(J) to include a program in the SIP that regulates the modification and construction of any stationary source as necessary to assure that the NAAQS are achieved.

There are four revisions to the Tennessee SIP that that are necessary to meet the requirements of infrastructure requirements of sections 110(a)(2)(C), prong 3 of 110(a)(2)(D)(i), and 110(a)(2)(J). These four revisions are related to (1) the Ozone Implementation NSR Update (November 29, 2005, 70 FR 71612), (2) the “Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule” (June 3, 2010, 75 FR 31514), (3) the NSR PM_{2.5} Rule (May 16, 2008, 73 FR 28321), and (4) the portion of the final rulemaking entitled “Final Rule Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers (PM_{2.5}) – Increments, Significant Impact Levels (SILs) and Significant monitoring Concentration (SMC):

Final Rule” that relates to the PM_{2.5} PSD increments requirements (hereafter referred to as the PM_{2.5} PSD Increment-SILs-SMC Rule (only as it relates to PM_{2.5} PSD Increments) (75 FR 64864).

Tennessee’s Ozone Implementation NSR Update revision was submitted by TDEC on May 28, 2009, and approved by EPA on February 7, 2012. *See* 77 FR 6016. Tennessee submitted its Greenhouse Gas (GHG) Tailoring Rule, to EPA on January 11, 2012, and EPA approved it on February 28, 2012. *See* 77 FR 11744. Tennessee submitted its NNSR requirements related to the implementation of the NSR PM_{2.5} Rule on July 29, 2011, and EPA approved this revision on July 30, 2012. *See* 77 FR 44481. On October 4, 2012, Tennessee submitted a letter to EPA requesting conditional approval of specific enforceable measures related to 110(a)(2)(C), prong 3 of 110(a)(2)(D)(i), and 110(a)(2)(J) concerning the October 20, 2010, PSD PM_{2.5} Increments, SILs and SMC Rule because Tennessee’s SIP does not currently contain provisions to address requirements associated with PM_{2.5} increments. Tennessee’s October 4, 2012, letter to EPA contained a schedule and commitment to provide the necessary SIP revision to address its SIP deficiencies related to the PM_{2.5} increments. Today’s conditional approval applies only to the PM_{2.5} increments portion of the PM_{2.5} Increments, SILs and SMC Rule. The PM_{2.5} Increments, SILs and SMC Rule provided additional regulatory requirements under the PSD program regarding the implementation of the PM_{2.5} NAAQS for NSR by specifically establishing PM_{2.5} increments pursuant to section 166(a) of the CAA to prevent significant deterioration of air quality in areas meeting the NAAQS. The letter can be accessed at www.regulations.gov using Docket ID No. EPA-R04-OAR-2012-0237. The four SIP

revisions outlined above⁷ address the requisite requirements of sections 110(a)(2)(C), prong 3 of 110(a)(2)(D)(i), and 110(a)(2)(J) and are necessary for approval of these infrastructure requirements.

In accordance with section 110(k)(4) of the CAA, EPA is proposing to conditionally approve these sections based upon a commitment from Tennessee that the State will submit a SIP revision addressing the increments associated with the PM_{2.5} PSD Increment-SILs-SMC Rule (only as it relates to PM_{2.5} Increments) to EPA for approval within one year from EPA's final conditional approval action. In its October 4, 2012, letter, TDEC committed to adopt the above-specified provisions and submit them to EPA for incorporation into the SIP by no later than one year from the publication date of EPA's final conditional approval action for that requirement. Failure by the State to adopt these provisions and submit them to EPA for incorporation into the SIP within one year from the effective date of EPA's final conditional approval action would result in this proposed conditional approval being treated as a disapproval. Should that occur, EPA would provide the public with notice of such a disapproval in the Federal Register.⁸

As a result of Tennessee's formal commitment to correct the deficiency contained in the Tennessee SIP pertaining to PM_{2.5} PSD increments, EPA is proposing to conditionally approve

⁷ (1) EPA's approval of Tennessee's PSD/NSR regulations which address the Ozone Implementation NSR Update requirements, (2) EPA's approval of Tennessee's PSD GHG Tailoring Rule revisions which addresses the thresholds for GHG permitting applicability in Tennessee, (3) EPA's approval of Tennessee's NSR PM_{2.5} Rule, which adopts required federal PSD and NNSR permitting provisions governing the implementation of the NSR program for PM_{2.5} as promulgated in the NSR PM_{2.5} Rule, and (4) EPA's proposed conditional approval of Tennessee's PSD PM_{2.5} Increments, SILs, and SMC rulemaking to the extent it addresses the PM_{2.5} Increments portion of the PM_{2.5} PSD Increment-SILs-SMC Rule..

⁸ EPA notes that pursuant to section 110(k)(4), a conditional approval is treated as a disapproval in the event that a State fails to comply with its commitment. Notification of this disapproval action in the Federal Register is not subject to public notice and comment.

sections 110(a)(2)(C), prong 3 of 110(a)(2)(D)(i), and 110(a)(2)(J) requirements consistent with section 110(k)(4) of the Act.

V. Proposed Action

As described above, EPA is proposing to conditionally approve Tennessee's infrastructure submissions pertaining to sections 110(a)(2)(C), prong 3 of 110(a)(2)(D)(i), 110(a)(2)(J) related to PSD, provided to EPA on October 4, 2012, as addressing the infrastructure requirements for the 2008 8-hour ozone NAAQS. Specifically, this conditional approval is based upon Tennessee's commitment that TDEC will provide the necessary SIP revision to address its SIP deficiencies related to the October 20, 2010, final rulemaking related to PSD PM_{2.5} Increments. EPA is proposing to conditionally approve Tennessee's SIP submission consistent with section 110(k)(4) of the CAA.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian

country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: November 21, 2012

A. Stanley Meiburg

Acting Regional Administrator,

Region 4.

